

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1209 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new
- 2       paragraph and insert:
- 3       "SECTION 1. IC 16-18-2-10 IS AMENDED TO READ AS
- 4       FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. ~~(a)~~ "Agency", for
- 5       purposes of IC 16-31-8.5, has the meaning set forth in IC 16-31-8.5-1.
- 6       ~~(b)~~ "Agency", for purposes of IC 16-41-37, has the meaning set forth
- 7       in IC 16-41-37-1.
- 8       SECTION 2. IC 16-18-2-114.5 IS ADDED TO THE INDIANA
- 9       CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10      [EFFECTIVE JULY 1, 2006]: **Sec. 114.5. "Enclosed", for purposes**
- 11      **of IC 16-41-37, has the meaning set forth in IC 16-41-37-1.3.**
- 12      SECTION 3. IC 16-18-2-150.7 IS ADDED TO THE INDIANA
- 13      CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 14      [EFFECTIVE JULY 1, 2006]: **Sec. 150.7. "Governmental agency",**
- 15      **for purposes of IC 16-41-37, has the meaning set forth in**
- 16      **IC 16-41-37-1.**
- 17      SECTION 4. IC 16-18-2-184.5 IS ADDED TO THE INDIANA
- 18      CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 19      [EFFECTIVE JULY 1, 2006]: **Sec. 184.5. "Place of employment",**
- 20      **for purposes of IC 16-41-37, has the meaning set forth in**
- 21      **IC 16-41-37-1.6.**
- 22      SECTION 5. IC 16-18-2-298 IS AMENDED TO READ AS
- 23      FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 298. "Public ~~building~~,"
- 24      **place",** for purposes of IC 16-41-37, has the meaning set forth in
- 25      IC 16-41-37-2.

SECTION 6. IC 16-41-37-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 0.5. (a) Except as provided in this section and section 6 of this chapter, this chapter does not apply to the following:**

(1) A private home or residence, unless the home or residence:  
 (A) is used to provide care as a licensed child care home under IC 12-17.2-5;

(B) is used to provide adult day care services; or

(C) except as provided in subdivision (2), is a health care facility (as defined in 16-28-13-0.5).

(2) A private or semiprivate room of a health facility licensed under IC 16-28-2 or IC 16-28-3 that is occupied by one (1) or more individuals who have all requested in writing to be placed in a room where smoking is permitted.

(3) If the enclosed areas of a business or an office are not open to the public, the following:

(A) A family owned business where all the employees are related to the owner.

(B) The offices of a self-employed person where all the employees are related to the self-employed person.

(4) A guest room in a hotel or motel that is designated as a smoking room. However, the:

(A) number of guest rooms where smoking is allowed may not be more than twenty percent (20%) of the total number of guest rooms; and

(B) status of a smoking room and nonsmoking room may not be changed except to add additional nonsmoking rooms.

(5) A retail tobacco store:

(A) that is used primarily for the sale of tobacco and tobacco related products, including cigarettes, cigars, tobacco, pipes, cigarette paper, and lighters;

(B) that is not licensed for the consumption of meals or alcoholic beverages on the premises or operated in conjunction with another business that is licensed for the consumption of meals or alcoholic beverages on the premises; and

(C) in which the sale of tobacco and tobacco-related products accounts for at least sixty-six percent (66%) of the store's gross sales.

However, a retail tobacco store does not include a tobacco department of a larger commercial establishment, including a grocery store, department store, or discount store.

(6) A private vehicle used for nonpublic purposes or a vehicle used while in the service of an employer when the vehicle is

occupied only by the employee.

**(7) A business that:**

**(A) offers alcoholic beverages for sale to customers and holds a:**

- (i) beer retailer's permit under IC 7.1-3-4;**
- (ii) liquor retailer's permit under IC 7.1-3-9; or**
- (iii) wine retailer's permit under IC 7.1-3-14;**

**(B) does not admit customers or hire employees who are less than twenty-one (21) years of age; and**

**(C) generated at least ten percent (10%) of its total annual gross income from the onsite sale of tobacco products in the previous calendar year.**

**(8) A bowling alley.**

**(9) An establishment that is a bar or tavern that meets the following requirements:**

**(A) Offers alcoholic beverages for sale to customers and holds a:**

- (i) beer retailer's permit under IC 7.1-3-4;**
- (ii) liquor retailer's permit under IC 7.1-3-9; or**
- (iii) wine retailer's permit under IC 7.1-3-14.**

**(B) Has provided the state department with notice with the establishment's license application under IC 16-42-5 that the establishment intends to allow smoking. The establishment must provide notice to the state department each year that it intends to allow smoking for that year.**

**However, the establishment that is physically located in a business required to be a nonsmoking area is not exempt.**

**(10) A business that:**

**(A) is exempt from federal income taxation under 26 U.S.C. 501(c);**

**(B) is a club (as described in IC 7.1-3-20-1) or a fraternal club (as described in IC 7.1-3-20-7);**

**(C) holds a:**

- (i) beer retailer's permit under IC 7.1-3-4;**
- (ii) liquor retailer's permit under IC 7.1-3-9; or**
- (iii) wine retailer's permit under IC 7.1-3-14; and**

**(D) provides food or alcoholic beverages to a member of the club or a member's guests or family.**

**(b) A location listed in subsection (a) is not exempt if smoke from smoking at the location enters an area where smoking is prohibited under this chapter.**

**(c) A business that claims an exemption under this section shall, upon request, provide an enforcement agency within three (3) business days adequate written proof that the business qualifies for an exemption. The written proof must be certified under the penalties for perjury by an authorized representative of the**

business.

(d) Establishments listed under subsection (a)(5), (a)(7), (a)(8), and (a)(9) shall post clear and conspicuous signs at every entrance that read: "WARNING: This is a Smoking Establishment."

SECTION 7. IC 16-41-37-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this chapter, ~~"agency"~~ **"governmental agency"** means a board, a commission, a department, an agency, an authority, or other entity exercising a part of the executive, administrative, legislative, or judicial power of the state or local government.

SECTION 8. IC 16-41-37-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.3. As used in this chapter, **"enclosed"** means the space closed in by a roof, ceiling, or other overhead covering of any material, and walls or other side coverings of any material on at least two (2) sides with appropriate openings for ingress and egress.

SECTION 9. IC 16-41-37-1.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.6. As used in this chapter, **"place of employment"** means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. The term includes places where a person volunteers the person's services.

SECTION 10. IC 16-41-37-2, AS AMENDED BY P.L.1-2005, SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. As used in this chapter, ~~"public building"~~ **"place"** means an enclosed ~~structure~~ area or the part of an enclosed ~~structure~~, that is ~~one (1)~~ of area, whether it is publicly or privately owned, where the public is invited or permitted, including the following:

- (1) Occupied by ~~an~~ a governmental agency. ~~of state or local government.~~
- (2) Used as a classroom building or a dining area at a state educational institution (as defined in IC 20-12-0.5-1).
- (3) Used as a public school (as defined in IC 20-18-2-15).
- (4) Licensed as a health facility under IC 16-21 or IC 16-28.
- (5) Used as a station for paid firefighters.
- (6) Used as a station for paid police officers.
- (7) Licensed as a child care center or child care home or registered as a child care ministry under IC 12-17.2.
- (8) Licensed as a hospital under IC 16-21 or a county hospital subject to IC 16-22.
- (9) Used as a provider's office.
- (10) Elevators.**

**(11) Laundromats.**

**(12) Adult day care facilities.**

**(13) Lobbies, hallways, and enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple residential facilities.**

**(14) Polling places.**

**(15) Public transportation facilities, including the following:**

**(A) Buses and taxicabs that are owned, operated, or under the authority of a governmental agency.**

**(B) Ticket, boarding, and waiting areas of public transit depots.**

**(16) Restrooms, lobbies, reception areas, hallways, and other common use areas.**

**(17) Shopping malls, including the enclosed public walkway or hall area that connects the retail or professional establishments.**

**(18) Areas where members of the general public assemble to:**

**(A) engage in physical exercise or recreation; or**

**(B) participate in athletic competition or witness sports events;**

**including sports arenas, sports pavilions, stadiums, athletic fields, gymnasiums, health spas, boxing arenas, swimming pools, and roller and ice skating rinks."**

Page 1, line 2, after "who" insert ":".

Page 1, line 3, before "smokes:" begin a new line block indented and insert:

**"(1)".**

Page 1, between lines 3 and 4, begin a new line double block indented and insert:

**"(A) in a public place or in an enclosed area within a place of employment;**

**(B) in a place where the owner has placed a no smoking sign; or**

**(C) in a vehicle or an enclosed area of a building that is owned, leased, or operated by a governmental agency and used for a governmental function; or**

**(2) owns, manages, operates, or controls a public place, a place of employment, or an area where smoking is prohibited and fails to comply with this chapter;"**

Page 1, strike lines 4 through 9.

Page 1, strike lines 11 through 13.

Page 1, line 14, delete "(5)" and insert "(3)".

Page 1, line 16, delete "(6)" and insert "(4)".

Page 2, after line 6, begin a new paragraph and insert:

**"SECTION 12. IC 16-41-37-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) The official,**

**owner, operator, employee, or manager** in charge of a public building place shall do the following:

(1) ~~Post conspicuous signs that read "Smoking Is Prohibited By State Law Except In Designated Smoking Areas" or other similar language.~~

(2) ~~(1) Request persons who are smoking in violation of section 4 of this chapter to refrain from smoking.~~

(3) ~~Remove a person who is smoking in violation of section 4 of this chapter and fails to refrain from smoking after being requested to do so.~~

**(2) Remove ashtrays and other smoking related paraphernalia from areas where smoking is prohibited.**

(b) The proprietor, **owner, operator, employee, or manager** of a restaurant shall, under sections 4 and 5 of this chapter, post conspicuous signs at each entrance to the restaurant, informing the public of the establishment's smoking policy: ~~bar or tavern that is exempt under section 0.5(a)(9) of this chapter shall prohibit a person who is less than eighteen (18) years of age from entering the establishment.~~

SECTION 13. IC 16-41-37-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. The state department may adopt rules under IC 4-22-2 to ~~restrict or prohibit smoking in public buildings where the close proximity of workers causes smoking to affect the health and comfort of nonsmoking employees.~~ **administer this chapter.**

SECTION 14. IC 16-41-37-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. Notwithstanding IC 16-41-39, this chapter does not prohibit a county, city, town, or other governmental ~~unit~~ **agency** from adopting an ordinance more restrictive than this chapter.

SECTION 15. IC 16-41-37-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10. A person or an employer may not discharge, refuse to hire, or in any manner retaliate against an employee, an applicant for employment, or a customer because the employee, applicant, or customer:**

**(1) reports or attempts to enforce a violation of this chapter;**  
**or**

**(2) exercises any right given under this chapter.**

SECTION 16. IC 16-41-37-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 11. This chapter may be enforced by the state department, the alcohol and tobacco commission, a local health officer, the division of public health of a municipal corporation, an Indiana law enforcement agency, the office of the sheriff of a county, or an organized police department of a municipal corporation.**

SECTION 17. THE FOLLOWING ARE REPEALED

- 1 [EFFECTIVE JULY 1, 2006]: IC 16-18-2-323.1; IC 16-18-2-323.4;
- 2 IC 16-41-37-1; IC 16-41-37-2.3; IC 16-41-37-2.7; IC 16-41-37-5;
- 3 IC 16-41-37-8."
- 4 Renumber all SECTIONS consecutively.  
(Reference is to HB 1209 as printed January 18, 2006.)

---

Representative Orentlicher